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Neutral Rights and Maritime Law

ON February 21, 1928, Senator Borah, Chairman of the Foreign Relations Committee, introduced a resolution seeking an expression on the part of the United States Senate that there should be a restatement of the rules of maritime law prior to the Conference for the Limitation of Naval Armaments in 1931. Holding that maritime law broke down completely during the World War, and that no clearly defined rules regarding the rights of neutrals and belligerents exist today, Senator Borah asked the Senate to state its belief that "the leading maritime powers owe it to the cause of the limitation of armaments and of peace to bring about such a recodification."

The present uncertain state of maritime law has been cited by "Big Navy" advocates in both the United States and Great Britain as an important reason for increased naval building. If countries cannot depend upon any law defining their neutral (or belligerent) rights, it is argued, they must be prepared to defend by force what they regard as their rights. It has been stated that one reason for the failure of the Naval Conference at Geneva last summer was the determination of the United States to prevent a repetition, in any possible future war in which she might remain a neutral, of the so-called blockade measures enforced by the Allies in the World War and the determination of Great Britain again to supervise and control neutral commerce in such a war.

If a conference to recodify the rules of maritime law were held, Senator Borah believes that it should be attended by virtually all the participants of the World War and by neutrals as well.

Senator Borah's resolution reads as follows:

> "Whereas, the rules of maritime law in time of war as codified at the second Hague Conference and in the declaration of London were in important respects departed from during the late war; and
>
> "Whereas it is important as a condition of the limitation of armaments and of the orderly conduct of international relations that the rules of law as developed in the course of centuries be not left in doubt or uncertainty; and
>
> "Whereas the present chaotic state of maritime law—leaving the seas subject to no definite rules save that of force and commerce to no ultimate protection save that of battle fleets—constitutes an incentive for great naval armaments; therefore be it

"Resolved, That the Senate of the United States believes

"First—That there should be a restatement and recodification of the rules of the law governing the conduct of belligerents and neutrals in war at sea.

"Second—That the leading maritime powers of the world owe it to the cause of the limitation of armaments and of peace to bring about such restatement and recodification of maritime law.

"Third—That such restatement and recodification should be brought about if practically possible prior to the meeting of the Conference on Limitation of Armaments in 1931."

ORIGIN OF THE LEGAL RIGHTS OF NEUTRALS

When a war breaks out nations which are not interested in the quarrel adopt an attitude of legal impartiality. The nations which are fighting are called belligerents; the outsiders, neutrals. Certain well-defined rights of belligerents and neutrals have grown up with the development of international law.

The apparent damage during the World War to the legal rights of neutrals has caused one authority today to question their existence by referring to the "so-called" laws of neutrality. Of the entire body of neutral maritime rights few rules went through the war without being violated,—or at least extended, "interpreted," or "brought up to date" by the principal belligerent powers. Whether the war measures of the belligerents caused any real changes in the rules of law is open to serious question. No international agreement has modified them. The mere breach of a rule of international law does not affect the validity of the law.

The difficulty lies in the fact that the laws of maritime warfare, which comprise neutral and belligerent rights and obligations, are a compromise between two sharply conflicting interests. During a war it is to the interest of neutrals to continue their trade unimpaired, as in peace. On the other hand, it is to the interest of belligerents to prevent their enemies from obtaining aid from neutral sources. In the absence of any permanent international legislative body, many of the rules of maritime warfare have received the tacit consent of nations through custom and practice. Others, such as the Declaration of Paris and some of the Hague Conventions, arose from temporary international legislative bodies and later received the express consent of nations. The international law of maritime warfare, as it existed in 1914, was a nice balance between neutral and belligerent interests—a compromise founded less on logic than on expediency.

MARITIME RIGHTS AND OBLIGATIONS UNDER INTERNATIONAL LAW

International law is a body of rules which are considered legally binding by civilized states. It is a law which directly affects states only, and according to most authorities does not confer rights on individuals. Thus "neutral rights" are not those of a neutral citizen engaged in trade, but are the rights of his state. The individual obtains his legal rights not from international law, but from his own state.

Some of the more fundamental neutral maritime rights under international law may be stated briefly as follows:

1. A neutral state has a legal right to let its nationals trade freely in war as in peace—even in contraband goods, or with blockaded ports—with one exception: neither the neutral state nor its nationals may furnish warships to either belligerent state, or send out military expeditions to such state, etc.

That is, a neutral state does not violate its neutrality because it refuses to forbid its citizens to trade in contraband. However, if a citizen engages in contraband trade, or trades with blockaded ports, he is liable to have his property confiscated if he is caught by either of the belligerents.

2. A neutral state has a legal right to maintain and protect from belligerent interference its own trade and the trade of its nationals, *except* for trade in contraband or with blockaded ports, and subject to belligerent rights of search, seizure, etc.

Thus, while a neutral state has an unqualified right to let its nationals trade at their own risk in contraband or non-contraband, its right to protect them is qualified: It can legally protect them only when they do not engage in those practices which belligerent states have a right to forbid, (contraband trade, violation of blockade, etc.).

The correlative obligations of belligerent states are:

1. Not to regard it as a violation of neutrality when a neutral state allows its nationals to trade freely in peace as in war, even in contraband goods or with blockaded ports—with the exception noted as to warships, etc.
2. Not to interfere with the trade of a neutral state or its nationals, except as permitted by and in accordance with the laws of search, seizure, contraband, blockade, etc.

On the other hand, the more fundamental maritime rights of belligerent states under international law are:

1. To require that neutral states abstain and cause their nationals to abstain from certain acts such as the sale[1] or fitting out of warships or the fitting or sending out of military expeditions.
2. A belligerent state has a legal right to search, seize and condemn neutral vessels for carrying contraband, violating a blockade, performing unneutral service, etc., as long as it (the belligerent) performs these acts in accordance with the international law of search, contraband, etc.

And the correlative obligations of neutral states are:

1. To refrain from, and to cause its nationals to refrain from, acts such as the sale of warships, etc.
2. Not to prevent belligerents from searching, seizing or condemning contraband goods and vessels violating blockades, etc., in accordance with the rules of international law.

CONFLICT BETWEEN NEUTRAL AND BELLIGERENT INTERESTS

In 1914 the law of maritime warfare rested on these belligerent and neutral rights and obligations. But the rules were not all evolved *a priori*. They were the result of a series of compromises arising from the long conflict between belligerent and neutral interests.

This conflict arose with the idea of neutrality.

In the armed neutralities of 1780 and 1800 some of the neutral countries of Europe organized to defend their neutral rights against belligerent encroachment, if necessary by force of arms. The rules they sought to defend, e. g., that neutrals might trade in war as in peace except in contraband and with blockaded ports; that blockades should be effective in order to be binding; that these principles should be applied in prize courts, were not immediately recognized by belligerents. However, the attitude of the United States from 1793 to 1818 aided in upholding neutral rights and was an important factor in limiting belligerent claims to interfere with neutral commerce.

Neutral insistence that belligerents justify their interference with neutral trade in court served to clarify and delimit the rights and obligations of neutrals and belligerents. When a neutral vessel was seized for alleged carriage of contraband or some other alleged offence it was "put in prize." That is, the captor was compelled to prove before a prize court that the capture was justified under international law. The prize court was of course a court created by the country (a belligerent) in which it sat, but the substance, though not the form, of the law it applied was international law.

CONTRIBUTIONS TO MARITIME LAW DURING THE 19TH CENTURY

During the Napoleonic wars the impartial decisions of the famous British Admiralty Judge, Sir William Scott, (later Lord Stowell) contributed greatly to restraining belligerent pretensions and giving neutrals an established legal status. A half century later the leading powers of Europe signed the Declaration of Paris of 1856 which practically codified maritime law on four important points involving the protection of private property at sea.

Similar attempts at codification were made at the two Hague Conferences in 1899 and 1907. Convention XII of the 1907 Hague Conference provided for the establishment of an International Prize Court to serve as a Court of Appeal from the decisions of prize courts of belligerents.

The fact that a neutral was forced to plead his claim before a court of the belligerent which had captured his property was considered unsatisfactory. Though the prize courts claimed they applied international law, in fact they applied their

1. Authorities differ as to whether a neutral state is legally obligated to prevent its nationals from selling armed vessels to a belligerent. Oppenheim says that armed vessels are merely contraband of war and a neutral state can let its nationals trade in them at their own risk. He says, however, that neutral states must prevent their nationals from building armed ships *to the order of a belligerent*. He admits that the difference is hair-splitting. Oppenheim, L. F., *International Law*, 4th ed. Vol. 2. p. 532-3.

own interpretation of international law.[2] It was to do away with this unsatisfactory condition, which still persists today, that an International Prize Court was proposed.

THE DECLARATION OF LONDON, 1909

Many countries were opposed to the establishment of the proposed Court without a clear understanding as to the law to be applied. The British Government, therefore, proposed a conference to discuss the existing status of international maritime law. The Conference met in London in 1908-1909 and attempted to codify this law. Each country was asked to prepare a memorandum setting forth its view as to the correct rule of international law on certain suggested points. The Conference attempted to reconcile divergent interpretations and put on a conventional basis what heretofore had rested for the most part on international custom, i. e., to obtain the express consent of nations for what had received their tacit consent through customary observance.

The ensuing Declaration of London was in the main a statement of the rules of international maritime law as they existed in 1909.[3] Such a codification was bound to contain certain compromises which were for some nations new rules rather than principles to which they had previously given their tacit consent. Opposition to the Declaration was to be expected and for various reasons ratifications of the Declaration of London were never exchanged.

In Great Britain a bill modifying British practice in conformity with the Declaration of London passed the House of Commons, but failed in the House of Lords. The United States Senate, on April 24, 1912, advised and consented to ratification of the Declaration of London. But the failure of Great Britain to accept the Declaration made the other powers unwilling to bind themselves by its provisions, and the American ratification was never deposited.

Immediately after the outbreak of the World War the United States asked the chief belligerent powers whether they would agree to be bound by the provisions of the Declaration of London during the war, provided such agreement was reciprocal. Acceptance of these laws by the belligerents, said the United States, would prevent the possibility of grave misunderstandings in the relations between the belligerents and neutrals. Germany and Austria accepted the proposal, and agreed to be bound by the rules in question on condition of reciprocity. Great Britain, France and Russia replied that they had decided to adopt, generally, the rules of the Declaration of London, subject to certain modifications which they deemed indispensable to their belligerent interests. However, since Article 65 of the Declaration of London stated that its provisions must be treated and accepted as a whole, and since Great Britain, France, Russia and Belgium had been unable to accept it without modification, the United States withdrew its suggestion. At the same time, the United States added that it would insist that its rights and the rights of its citizens during the war be defined by the existing rules of international law and the treaties of the United States, without regard to the Declaration of London.[4]

Thus the Declaration of London, as such, was never in force during the war, and the decrees of certain of the Powers, purporting to promulgate the Declaration, subject to modifications, were merely statements of the law which they intended to apply in maritime matters.

As Professor Wambaugh has said, "The Declaration as Declaration was never binding at all;. . . the parts of it already parts of international law were binding irrespective of this unratified Declaration. The novel parts of it never became binding."[5]

2. In a strict sense prize courts apply municipal, not international, law. The substance of the law is the court's interpretation of international law, but in form it is municipal law which has adopted, as its own, portions of international law. Cf. Hyde, C. C., *International Law*, Vol. 2., p. 802ff. Oppenheim, op. cit. Vol. 2. p. 708.

3. The Declaration was signed by Austria-Hungary, France, Germany, Great Britain, Italy, Japan, the Netherlands, Russia, Spain and the United States, but was not ratified by any of the Signatory Powers.

4. American Journal of International Law, Special Supplement, Vol. 9 (1915). *Diplomatic Correspondence Between the United States and Belligerent Governments Relating to Neutral Rights and Commerce.* p. 1-8. In later footnotes, references to the American Journal of International Law will be cited as A. J. I. L.

5. Book Review of Garner, *International Law and the World War.* (Harvard Law Review. Vol. 34, (1920-1). p. 695.)

A more detailed survey of the effect of the World War on some of the principal rules of international law is essential to an understanding of the present situation. Outstanding among these rules are (1) the law of contraband, (2) the law of blockade, (3) the law of search, and (4) the law dealing with confiscation and condemnation of private property seized at sea.

THE LAW OF CONTRABAND

Under international law, belligerents have the right to intercept and prevent certain articles from being carried to their enemies, even in the absence of a blockade. These articles when destined for the enemy are called contraband and are regarded as objectionable in themselves, i. e., capable of warlike use.

CHARACTERISTICS OF CONTRABAND GOODS

The two essential elements of contraband are (1) the character of the goods and (2) an enemy destination. On the first point Grotius, while not employing the word contraband or the exact terminology here used, distinguished between *absolute* contraband, or articles such as arms,—manufactured and primarily and ordinarily used for military purposes in time of war; *conditional* contraband—articles which may be and are used by the armed forces or the civilian population, according to circumstances; and goods on the free list—articles exclusively used for peaceful purposes, i. e., *non-contraband* goods.[6] Although this classification has been opposed by one or two publicists, it has generally been recognized as international law for more than two centuries.

The right to determine what particular goods shall be considered contraband has always been exercised by the belligerents. Though neutrals have protested when they considered the lists too all-inclusive, no rule prevents the belligerent from expanding them at will. There has always been a controversy as to what articles should be absolute contraband, and what should be placed in the other categories. Most neutrals have admitted that guns, ammunition, or military uniforms going to a belligerent are absolute contraband, but many have questioned the inclusion of mules and horses. The Declaration of London included the latter in its list of absolute contraband, though one of the American delegates[7] said that at least one-half the members of the conference were opposed to the inclusion of horses and mules in the list.

Similarly it has always been difficult to decide which articles should be placed on the conditional contraband list and which on the free list. Most authorities agree that under ordinary circumstances foodstuffs should not be contraband, but it has been the practice of the leading powers to treat as conditional contraband foodstuffs directly destined for the use of the enemy army or navy. John Bassett Moore says that the rule on this subject was perhaps never better stated than by Lord Salisbury, when, in January, 1900, during the Boer War, he said, "Foodstuffs with a hostile destination can be considered contraband of war only if they are supplies for the enemy's forces. It is not sufficient that they are capable of being so used; it must be shown that this was in fact their destination at the time of the seizure."[8]

The London Naval Conference of 1908-1909 sought to limit the absolute right of belligerents to make up their own contraband lists by specifying what articles might be considered contraband in the various classifications. At the same time the lists contained in the Declaration of London were not exclusive, as belligerents were to have the right to add to them by notification. The lists in the Declaration are reprinted in an appendix to this report.

6. Cf. *The Peterhoff*. U. S. Supreme Court Reports—5 Wall. 28 (1866).

7. Stockton, Admiral C. H. *The International Naval Conference of London*. (A. J. I. L. Vol. 3 (1909). p. 605.)

8. Moore, J. B. *International Law and Some Current Illusions and Other Essays*, p. 28.

PROOF OF ENEMY DESTINATION REQUIRED

Whatever the character of the articles in these lists, they are not contraband unless they have an enemy destination. International law requires, as a justification for seizure of neutral property on the high seas, that the captor prove before a prize court that the alleged contraband goods had an enemy destination when seized. In the case of absolute contraband, it is necessary to prove only that the goods have a destination for the enemy country, or territory occupied by the enemy. In the case of conditional contraband, however, there must be proof that the goods are destined not only for the enemy territory but for the use of the armed forces, or of a government department of the enemy state. For example, munitions of war or army uniforms (being of the nature of absolute contraband) would be liable to condemnation as good prize if it were shown that they had a destination for the enemy territory. But railway material or fuel (being of the nature of conditional contraband) could not be condemned merely upon proof that they were destined for such territory. Being only conditionally contraband they could be condemned only if a further destination for the use of the armed forces or government of the enemy could be proved.[9] The distinction between combatants and non-combatants is the basis for this distinction between absolute and conditional contraband.

Within a few weeks after the outbreak of the World War the belligerents declared the lists of absolute and conditional contraband, drawn up in the Declaration of London, to be inadequate. Articles which had never previously been regarded as capable of war-like use were found through necessity and new inventions to be of great value to the army. Many goods were shifted rapidly from the free list to the conditional contraband list and from the latter to the absolute contraband list. The final British list of contraband articles, which covered two pages of the *London Gazette* of July 3, 1917, is reprinted in an appendix to this report.

9. Cf. Verzijl, J. H. W. *Le Droit des prises de la grande guerre.* p. 756-67.

The doctrine of continuous voyage likewise played a large part in causing goods to be designated as absolute, rather than conditional, contraband. Under international law a belligerent could not ordinarily intercept neutral commerce between two neutral ports. But under the doctrine of continuous voyage, or ultimate destination, neutral goods of the nature of absolute contraband, going from one neutral port to another, might be seized and condemned if the captor could prove that the particular goods had in reality an ultimate enemy destination via the neutral country. That is, though ostensibly the voyage was between two neutral ports, if there was the intention to forward the goods to a belligerent, there existed in law a "continuous voyage," and the vessel or goods might be seized even when between neutral ports.

It was manifestly less difficult to prove an ultimate destination to enemy territory (as required for absolute contraband) than to prove ultimate destination for the enemy armed forces or government departments (required for the condemnation of conditional contraband), and the temptation was thus strong to shift goods from the conditional to the absolute contraband list.

DISTINCTION BETWEEN ABSOLUTE AND CONDITIONAL CONTRABAND LOST

As the war progressed the distinction between absolute and conditional contraband was practically broken down. It was argued by the belligerents that this was only natural, since the distinction between combatants and non-combatants was itself largely disappearing. This view was examined in an editorial in the American Journal of International Law which said:

> "Again, in a war in which the nation is in arms, where every able-bodied man is under arms and is performing military duty, and where the non-combatant population is organized so as to support the soldiers in the field, it seems likely that belligerents will be inclined to consider destination to the enemy country as sufficient, even in the case of conditional contraband, especially if the government of the enemy possesses and exercises the right of confiscating or appropriating to naval or military uses, the property of its citizens or subjects of service to the armies in the field."[10]

10. A. J. I. L. Vol. 9 (1915). p. 212.

On April 13, 1916 a British White Paper[11] declared that, due to the peculiar circumstances of this war, the distinction between absolute and conditional contraband had lost its value. Mobilization of the German civilian population to take part indirectly in the war had weakened the distinction between the armed forces and the civilian population; and, furthermore, most of the articles on the British conditional contraband list were now controlled by the German Government and available for the use of the armed forces. Therefore, so long as the exceptional conditions prevailed, Great Britain would treat all contraband alike in order to protect her belligerent interests. The other countries followed suit and, despite frequent protests by neutral governments, the war ended with the distinction between absolute and conditional contraband practically non-existent.

The arguments on which the Allies justified their abolition in practice of the distinction between conditional and absolute contraband have been seriously questioned by some international lawyers, notably John Bassett Moore. Referring to the distinction between absolute and conditional contraband, he makes the following statement:

> ". . . . the distinction . . . . never rested on logic, in the sense that it was imagined that 'conditional contraband', which includes foodstuffs, was not of military value. . . . no one ever imagined that foodstuffs imported into a belligerent country could not be immediately consumed, or that the government could not or would not take for military use whatever it might need. . . ."

But neutrals, he says, maintained successfully "that the non-combatant mouths always vastly outnumbered the combatant, so that the preponderant consumption of food was ordinarily not hostile."

The distinction between conditional and absolute contraband represented a compromise between belligerent claims to stop trade and neutral claims to carry it on, "either of which if carried to its logical conclusion, would have destroyed the other, being in this particular like most other legal rules."[12]

THE LAW OF BLOCKADE

Distinct from its right to prevent certain articles (contraband) from being carried to its enemies, a belligerent has a right under certain conditions to intercept all trade by sea with its enemy, regardless of whether the goods it seizes are contraband or non-contraband. This is the right of blockade.

Blockade has been defined as "the blocking by men-of-war of the approach to the enemy coast, or a part of it, for the purpose of preventing ingress or egress of vessels . . . . of all nations."[13]

Blockade is a means of warfare which must be limited to the ports and coasts belonging to or occupied by the enemy. The Declaration of London merely reaffirmed a customary rule of international law of long standing when it stated (Art. 18) that "the blockading forces must not bar access to neutral ports or coasts."

Similarly, the rule of the Declaration of Paris of 1856 is a statement of customary law when it says, "Blockades in order to be binding must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy."

Although not a signatory of the Declaration of Paris the United States contended that this rule "has been universally recognized as correctly stating the rule of international law as to blockade."[14]

Another rule of international law is that a blockade must be applied impartially to the vessels of all nations.

APPLICATION OF "CONTINUOUS VOYAGE" TO BLOCKADE

Prior to 1914 there was a cleavage between the Anglo-American and the Continental schools as to the application of the doctrine of continuous voyage to blockade.[15] Could neutral goods sailing between two neutral ports be seized on the presumption that they would later violate a blockade, i. e., on the theory that they were in reality en-

11. A. J. I. L., Spec. Supp. Vol. 10 (1916). p. 52.
12. J. B. Moore, op. cit. p. 31, 27, etc.
13. Oppenheim, L. F. *International Law.* 4th ed. Vol. 2. p. 595.
14. A. J. I. L., Spec. Supp. Vol. 10. p. 80, Lansing to Page, Oct. 21, 1915.
15. Briggs, Herbert W. *The Doctrine of Continuous Voyage.* p. 101 ff.

gaged in a continuous voyage to the enemy via an intermediate neutral port? At the London Conference of 1908-1909 the United States and Japan accepted unreservedly the application of the doctrine to blockade. The British Government took no definite stand on the question and the Continental nations opposed it. By a compromise the Conference decided that the doctrine of continuous voyage should be retained with regard to absolute contraband, but forbidden with regard to conditional contraband and with regard to blockade.

Thus, as regards blockade and continuous voyage, the Conference recognized as the existing international law on this point that "whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade if, at the moment, she is on her way to a non-blockaded port."

In other words, neutral goods could not be seized on a voyage between two neutral ports merely on the ground that they might later violate a blockade.

ALLIED "MEASURES OF BLOCKADE" AROUSE PROTEST

In spite of the fact that in 1909 only the United States and Japan had defended the application of the doctrine of continuous voyage to blockade, in 1915 new defenders of the doctrine, as it applied to blockade, appeared. The British Order in Council of March 11, 1915[16] provided (Articles 1 and 2) for the establishment of a blockade of all German ports. This was within the rights of Great Britain and the Allies as belligerents, although the adoption of an "open" as opposed to a traditional "close" blockade gave rise to some protest.

Articles 3 and 4, however, of the same Order called for the application of the doctrine of continuous voyage to blockade. They provided that every merchant vessel sailing to (or from) a port *other* than a German port, carrying goods with an enemy destination[17] (or origin), or which were enemy property might be required to discharge such goods in a British or allied port, where, if not contraband, and if not requisitioned, they would be restored "upon such terms as the Court may in the circumstances deem to be just, to the person entitled thereto." In other words Great Britain and France announced that they would "hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin." But that "it is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to condemnation."[17a]

The United States immediately protested against the ambiguity of the proposed measures.

> "The first sentence claims a right pertaining only to a state of blockade. The last sentence proposes a treatment of ships and cargoes as if no blockade existed. The two together present a proposed course of action previously unknown to international law."[18]

In a further protest the United States said that if the measures proposed were actually carried out they would constitute "a practical assertion of unlimited belligerent rights over neutral commerce within the whole European area, and an almost unqualified denial of the sovereign rights of the nations now at peace."[19]

All mention of the word "blockade" was scrupulously avoided in the Order in Council of March 11, giving effect to the Allied measures. In presenting the proposals to the House of Commons, March 1, 1915, the Prime Minister (Mr. Asquith) said:

> "Now . . . . from the statement I have just read out of the retaliatory measures we propose to adopt, the words "blockade" and "contraband" and other technical terms of international law do not occur, and advisedly so. In dealing with an opponent who has openly repudiated all the restraints, both of law and of humanity, we are not going to allow our efforts to be strangled in a network of juridical niceties. We do not intend to put into operation any measures which we do not think to be effective, and I need not say we shall carefully avoid any measures which violate the rules either of humanity or of honesty. Subject to these two conditions I say to our enemy

16. A. J. I. L., Spec. Supp. Vol. 9. p. 110.

17. A supplemental Order in Council, dated February 16, 1917, declared that "a vessel which is encountered at sea on her way to or from a port in any neutral country affording means of access to the enemy territory, without calling at a port in British or allied territory shall, until the contrary is established, be deemed to be carrying goods with an enemy destination, or of enemy origin and shall be brought in for examination and, if necessary, for adjudication before the Prize Court." Cf. Briggs Op. cit. p. 125.

17a. A. J. I. L., Spec. Supp. Vol. 9. p. 102. Spring-Rice to Bryan, March 1, 1915; and p. 116. Inclosure in Sharp to Bryan, March 30, 1915.

18. A. J. I. L., Spec Supp. Vol. 9. p. 103, Bryan to Page, March 5, 1915.

19. Ibid. p. 117, Bryan to Page, March 30, 1915.

. . . . that under existing conditions there is no form of economic pressure to which we do not consider ourselves entitled to resort. If, as a consequence, neutrals suffer inconvenience and loss of trade, we regret it, but we beg them to remember that this phase of the War was not initiated by us."[20]

In similar vein Sir Samuel Evans, President of the British Prize Court, said, during the argument in the *Hakan*, that "what was called a blockade was not a blockade at all except for journalistic and political purposes."[21]

U. S. PROTESTS FORCE BRITAIN TO DEFEND "BLOCKADE MEASURES"

Although at first Great Britain sought to avoid defending the "blockade" as a legal measure, the protests of the United States Government and of an influential section of the American press soon caused a change of front. The Order in Council of March 11, 1915 did not use the word "blockade," but the note of the British Government accompanying the Order in Council stated that the object of the Order was "to establish a *blockade* to prevent vessels from carrying goods for or coming from Germany"—and thereafter the word "blockade" was used in discussing the measures taken to prevent commerce with Germany.

The principal British argument[22] was that this blockade was merely an adaptation of the old principles of blockade to new circumstances of maritime warfare. The German ports were blockaded, but trade with Germany continued through neighboring neutral countries. The United States seemed to believe, said the British Government, that if the enemy were so situated that he could conduct his trade easily and securely through neighboring neutral countries, the belligerent could not interfere with trade with those neutrals, but must allow his adversaries those channels of trade. The British Government felt, however, that the doctrine of continuous voyage gave it the right to intercept enemy trade passing through neutral ports.

"As a counterpoise to the freedom with which one belligerent may send his commerce across a neutral country without compromising its neutrality, the other belligerent may fairly claim to intercept such commerce before it has reached or after it has left, the neutral State, provided, of course, that he can establish that the commerce with which he interferes is the commerce of his enemy and not commerce which is bona fide destined for or proceeding from the neutral State. It seems, accordingly, that if it be recognized that a blockade is in certain cases the appropriate method of intercepting the trade of an enemy country, and if the blockade can only become effective by extending it to enemy commerce passing through neutral ports, such an extension is defensible and in accordance with principles which have met with general acceptance."[23]

The United States should remember, said Great Britain, that this blockade was unusual: In this blockade the object was not merely to prevent vessels from reaching or leaving German ports, but to prevent goods of any kind from reaching or leaving Germany. Yet in order to ease the burden on neutral commerce the Allies were attempting to substitute for the confiscation of commerce merely the control of commerce—direct or indirect—with Germany. Even if the blockade were an extension of the doctrine of continuous voyage, continued the British argument, it should be remembered that international law, to be of any value, must conform to new methods of warfare.

At any one time the existing rules of naval warfare were formulated on the experience of previous conditions. However, when these conditions changed, the law must be extended in conformity with the changes. In this war the existing rules of maritime law were largely those formulated over a century since by Lord Stowell. Now, however, the introduction of steamships, railways, cables, submarines and other inventions had revolutionized conditions of trade. Science had been able to render almost every article of commerce of direct or indirect use to the armed forces. The old condition of a "nation in arms" was returning after the lapse of centuries and the distinction between combatants and non-combatants was difficult to uphold. To meet these new conditions Prize Courts had attempted, not to make new law, but to develop existing principles of law. In a defense of the British blockade measures an English

20. Cf. Briggs, op. cit. p. 123ff.

21. Moore, J. B., *Principles of American Diplomacy*. p. 79 note.

22. Cf. Briggs, op. cit. p. 126ff.

23. A. J. I. L., Spec. Supp. Vol. 9. p. 159. Note of Sir Edward Grey enclosed in Page to Bryan, July 24, 1915.

writer in the British Year Book of International Law said:

> There is a considerable tendency (perhaps not unnatural, in view of the fact that international law is really based on the practice of nations) to hold that when a thing is done for the first time it must be illegal because it has not been done before, but if it is done again to accept it on the ground that there is a precedent for it. This, however, is an unscientific method of procedure, and the true test surely is whether the new development is consistent with the main underlying principles of law and is necessitated by the changed circumstances in which it is applied. It is by this test that the Allied blockade measures ought to be judged.[24]

The United States directed its criticism against the character, the effectiveness, and the legitimacy of the blockade.[25] The blockade was ineffective, said the United States, because, although it purported to be a blockade of all German ports, it was notorious that the Scandinavian ports were open to trade freely with German ports. Moreover, the attempt of Great Britain to apply the doctrine of continuous voyage to non-contraband goods, en route to Scandinavian countries, was an illegal extension of the doctrine. The voyage of goods from the United States to Scandinavian ports was legal and the further voyage from Scandinavia across the Baltic to Germany was also legal since there was no effective blockade. Thus, in effect, an attempt was made to extend the doctrine to blockade where no blockade existed.

The United States Government argued further that the so-called blockade was in effect no less than a blockade of neutral ports. What Great Britain was admittedly trying to do, i. e., prevent goods of any kind from reaching or leaving Germany, the United States protested was not permitted by the law of blockade. The law of contraband permitted a belligerent to seize *contraband* goods *en route* to the enemy. But the belligerent could not seize non-contraband goods except for breach of blockade and a blockade had to be limited to the ports and coasts of the enemy. The British argument, that "the one principle which is fundamental and has obtained universal recognition is that by means of blockade a belligerent is entitled to cut off by effective means the sea-borne commerce of his enemy," assumed too much. The right of blockade is a right to block the approach of vessels to the enemy ports and coast—not a right to cut off all the sea-borne commerce of the enemy.[26]

It was for this reason that the London Naval Conference refused to sanction the application of the doctrine of continuous voyage to blockade. No blockade was violated by goods on a voyage, say, from the United States to Holland during the last war, because the belligerent had no right to blockade neutral ports. Furthermore, no blockade was violated when the same goods were sent by land from Holland to Germany. These goods going from the United States to Holland could be seized, however, if they were absolute contraband, upon proof that they were in reality on a continuous voyage to Germany. But this would be an application of the doctrine of continuous voyage to contraband, not to blockade. And any attempt to seize non-contraband goods *en route* to Holland thus became a blockade of neutral ports.

A practical way out, of course, was for belligerents to place all goods possible on the contraband list and seize them before they reached Holland, under an application of the doctrine of continuous voyage to contraband. This was done to a great extent.

THE LAWS OF SEIZURE AND CONFISCATION

Similar to the infringement of neutral maritime rights as regards contraband and blockade were the violations or "extensions" of the rules of search, seizure, and of prize procedure in such matters as the introduction of extrinsic evidence, the shifting of the burden of proof from captor to claimant, contrary to previous practice, condemnation on general presumptions rather than on proof as to whether a specific cargo had an ultimate enemy destination, etc., etc.[27]

There were some very definite rules of international law as to visit and search—one

24. H. W. Malkin, *Blockade in Modern Civilization*, in British Year Book of International Law, 1922-3. p. 87-97.

25. Cf. Briggs, op. cit. p. 131-144.

26. Oppenheim, op. cit. Vol. 2. p. 595; C. C. Hyde, op. cit. Vol. 2. p. 647; J. B. Moore, *Digest* Vol. 7. p. 780 ff. Fauchille, *Traite de Droit International Public*, Tome 2. p. 939; Fenwick, International Law. p. 537; Hersey, *Essentials of International Public Law and Organization*. p. 692. Pearce Higgins in his (8th) edition of Hall's *International Law*, Part IV, Chap. VIII, favors the new Allied conception of "blockade."

27. Cf. Briggs, op. cit. Chap. IX.

of them being that search should be on the high seas and that there should be no seizure unless evidence found on the vessel led to suspicion that it was engaged in carrying contraband, that it intended to violate a blockade, or to perform some other unneutral service.[28] During the war, however, vessels were sometimes "detained" on the high seas, when no evidence justifying capture existed. They were brought into port and officially seized there after damaging evidence had been found. Sometimes the evidence was not even acquired by the belligerent until after the vessel had been in port several days, when from intercepted cables or other extrinsic means, evidence sufficient to seize the vessel was found.[29]

BURDEN OF PROOF SHIFTED DURING THE WORLD WAR

Once his property was seized the neutral trader had to claim it before the belligerent's prize court. Before the war, the burden of proof as to enemy destination of the goods seized was on the captor. Under international law the captor had no right to seize neutral property on the high seas unless he could prove that the particular goods seized had a destination—either direct or ultimate—for the enemy. During the war, however, the belligerent prize courts shifted the burden of proof to the claimant. Belligerents not only seized indiscriminately before they had proof sufficient to justify seizure, but they presumed that the goods had an ultimate enemy destination and confiscated them unless the claimant could prove otherwise.[30]

The United States protested strongly against infringement of its neutral rights, but the British Government replied that there was really no violation of international law: The whole question of prize court procedure and practice was one to be regulated by municipal law. International law required only that the procedure be just and allow the neutral a fair hearing; aside from this each state was free to regulate the procedure of its prize courts as it pleased. The rules which the United States accused Great Britain of violating had, it is true, been developed over a long period of time, and had been adopted by the United States. Nevertheless, said the British Government, they were British municipal law rules and had never been adopted by Continental nations. Since Great Britain now considered her rules to be out of harmony with modern conditions she had changed them.

In these cases (as with the violation of the laws of contraband and blockade) the "extensions" of the international law on the particular subject came about by municipal law enactments, which frequently worked as a deprivation of neutral rights under international law. For example, the seizures of neutral property on the high seas were made by belligerent armed forces acting under the orders of their governments. But these orders were not necessarily in accordance with international law. And the neutral trader who contested their legality was forced to plead his claim before his captor's prize court. It was but natural that prize courts preferred not to regard the orders of their governments as in violation of international law, if it was at all possible to regard them as "extensions" necessary to bring the law into conformity with modern conditions.

Even if one grants that international law, to be of value, must develop to meet new circumstances, it may well be questioned whether one of the interested Parties (a belligerent engaged in a struggle for its existence) should be the law-giver, or even the sole judge as to what new interpretations are necessary. A committee of the American Society of International Law declared that international law cannot be changed by "the volition, the opinion, or the practice of a single belligerent or a group of belligerents," and since no alteration was made during the war by common consent, "all acts not in harmony with the law as it existed in 1914 were violations of it."[31]

In September, 1916, Secretary of State Lansing made the following statement in regard to the rules set forth in British Orders

28. Cf. American Society of International Law, *Proceedings*, 1922. p. 49, 53 ff.

29. Cf. Briggs, Op. cit. p. 145-152.

30. Ibid. p. 158-164; p. 172-212.

31. American Society of International Law, *Proceedings*, 1922. p. 55.

in Council for the guidance of British authorities:

> ". . . . the Government of the United States . . . . , deems the rules therein set forth . . . . as at variance with the law and practice of nations in several respects, in regard to some of which the United States has already made known its views in prior correspondence, and that the Government of the United States reserves all of its rights in the premises, including the right not only to question the validity of these rules, but to present demands and claims in relation to any American interests which may be unlawfully affected directly or indirectly by the application of these rules."[32]

In reply the British Government pointed out "that if the rules cited in the Order in Council are not deemed by the United States Government to be in accordance with international law, they should be challenged in the Prize Court."[33]

In November, 1916, Mr. Lansing wrote to Mr. Page:

> "You will address to the Foreign Office a note in reply to the effect that without admitting that even individual rights when clearly violated by Orders in Council must be maintained by resort to local tribunals, this Government must announce that it, of course, has no intention to resort to British courts for the maintenance of such of its national rights as may be infringed by Orders in Council of Great Britain."[34]

THE UNITED STATES ENTERS THE WAR

Until it entered the war the United States continued to protest without success against the legality of the Allied measures. It has been argued by advocates of a larger navy that only the naval inferiority of the United States during the first three years of the war forced it to submit to the humiliating regulation of its trade by belligerents.[34a] After its entry into the war, the United States, until then the principal defender of neutral rights, quickly forgot its grievances against the Allies, while denouncing Germany's flagrant violations of neutral rights.

No neutral country has presented claims against the United States for the activities of its Navy after it entered the war. Theoretically, the position of the United States would seem to be that the laws involving neutral rights remain today as they were in 1914; they have been violated, but this has not affected their validity.

32. A. J. I. L., Spec. Supp. Vol. 11. p. 1-2, Lansing to Chargé Laughlin, September 18, 1916.

33. Ibid. p. 2. Foreign Office enclosure in note from Page to Lansing, October 11, 1916.

34. Ibid. p. 3.

34a. See *Information Service*, Vol. III, Nos. 21-22. "The International Naval Situation."

DIPLOMATIC ARRANGEMENT CONCLUDED WITH GREAT BRITAIN, 1927

In fact, however, the State Department, by an exchange of notes with Great Britain on May 19, 1927, has concluded a Diplomatic Arrangement[35] providing that neither Party will make further claim against the other on account of supplies furnished, services rendered or damages sustained by either in connection with the prosecution of the recent war, all such accounts to be regarded as definitely closed and settled. Further, that neither Party will present any diplomatic claim or request international arbitration on behalf of any national alleging loss or damage through war measures adopted by the other.

The Arrangement provides a method by which American nationals may attempt to secure compensation for their claims. They must prosecute their claims before "the appropriate judicial or administrative tribunal of the Government against which the claim is alleged to lie, ... the decision of such tribunal or of the appellate tribunal, if any, to be regarded as the final settlement of such claim." In other words, American nationals must prosecute their claims before the British Prize Court, although the British Prize Court is not likely to hold that the British Orders in Council (upon which the belligerent seizures giving rise to the claims are based) are contrary to international law. However, the United States State Department will use the "net amount saved to it through the above mentioned waiver by His Majesty's Government of outstanding claims against the Government of the United States, as intended for the satisfaction of those claims of American nationals falling within the scope of Paragraph (2) of Article I of the agreement, which the Government of the United States regards as meritorious and in which the claimants have exhausted their legal remedies in British Courts, in

35. U. S. *Treaty Series*, No. 756.

which no legal remedy is open to them, or in respect of which for other reasons the equitable construction of the present agreement calls for a settlement."

That is, American nationals will have an administrative appeal from the British Prize Courts to the United States State Department. No judicial review of their claims is as yet provided for. The financial claims are thus eliminated from the field of international dispute.

PRESENT LEGAL STATUS OF NEUTRALS IN DISPUTE

Paragraph 3 of Article I of the Arrangement leaves the legal position on neutrality as follows:

> (3) That the right of each Government to maintain in the future such position as it may deem appropriate with respect to the legality or illegality under international law of measures such as those giving rise to claims covered by the immediately preceding paragraph [i. e., claims for violations of neutral rights] is fully reserved, it being specifically understood that the juridical position of neither Government is prejudiced by the present agreement.

There is a difference of opinion as to whether this paragraph leaves the legal position of the United States Government unimpaired. At any rate it leaves to some future time the settlement of certain debatable questions on maritime law.

For example, what is the status of neutral rights today? What is the extent of belligerent rights? How far is the international law of blockade different from what it was in 1914? Was international law modified during the war, or were the alleged modifications really violations? If a neutral is unable, or unwilling, to fight to prevent inroads on its neutral rights by one belligerent, has the other belligerent a right of retaliation? If so, against whom is there a right to retaliate? Against the neutral? Or is it against the belligerent enemy with incidental damage to neutral rights? Are the rights of belligerents to be stated in terms of means or of ends? For example, is the right of blockade a right to prevent all trade with the enemy (as both belligerents claimed during the war) or is it a right to prevent ingress or egress of all vessels to the enemy coast?

Both the "hunger blockade" which Germany attempted to enforce against Great Britain by means of her submarine warfare and the Allied "measures of blockade" involved breaches of international law. Both Germany and the Allies claimed that their infringements of neutral rights were justified on grounds of retaliation. "It is impossible," said Sir Edward Grey, "for one belligerent to depart from rules and precedents and for the other to remain bound by them."[36]

Both Germany and the Allies seemed to maintain the theory that if a neutral is too weak or too pacifically inclined to prevent a violation of its neutral rights by one belligerent, the other belligerent has a right of retaliation which, though directed against his opponent, may infringe neutral rights.

The German measures, involving as they did the loss of life of non-combatants, were almost universally condemned. No one seriously maintained that the breach of the law had brought about a change in the rule.

The Allied measures, however, were somewhat different. They inflicted only loss of property on neutrals and the nations of the world did not join in condemning them. Moreover, the Allies successfully maintained their measures as long as the war lasted and even since the war their measures have found defenders.

Any conference meeting to restate and recodify the rules of maritime law will find itself divided on a fundamental issue: Should it be a law-stating conference or a law-making conference? Should it merely restate the laws as they exist or should it attempt to remake the laws? Should its function be declaratory or legislative?

Some opposition to a conference to consider the present status of international maritime law may be encountered on the ground that the era of neutrality has passed. In modified form, and with exceptions, the idea that there should be no neutrals in future wars has been embodied in the Covenant of the League of Nations, and, indeed, in all proposals for the outlawry of war.

A subsequent *Information Service* report will consider some of the problems connected with the post-war conception of neutrality.

36. A. J. I. L. Spec. Supp. Vol. 9. p. 83. Grey to Page, February 10, 1915.

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APPENDIX I

List of Articles Specified by the London Naval Conference as Absolute Contraband, Conditional Contraband, and Non-Contraband

Article 22. The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. All kinds of harness of a distinctively military character.
7. Saddle, draught, and pack animals suitable for use in war.
8. Articles of camp equipment, and their distinctive component parts.
9. Armour plates.
10. Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
11. Implements and apparatus designed exclusively for the manufacturer of munitions of war, for the manufacture or repair of arms or war material for use on land or sea.

* * * *

Article 24. The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

1. Foodstuffs.
2. Forage and grain, suitable for feeding animals.
3. Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds available for use in war, and their component parts.
6. Vessels, craft, and boats of all kinds, floating docks, parts of docks and their component parts.
7. Railway material, both fixed and rolling stock, and material for telegraphs, wireless telegraphs, and telephones.
8. Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
9. Fuel; lubricants.
10. Powder and explosives not specially prepared for use in war.
11. Barbed wire and implements for fixing and cutting the same.
12. Horseshoes and shoeing materials.
13. Harness and saddlery.
14. Field Glasses, telescopes, chronometers, and all kinds of nautical instruments.

* * * *

Article 28. The following may not be declared contraband of war:

1. Raw cotton, wool, silk, jute, flax, hemp and other raw materials of the textile industries, and yarns of the same.
2. Oil seeds and nuts; copra.
3. Rubber, resins, gums, and lacs; hops.
4. Raw hides and horns, bones and ivory.
5. Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
6. Metallic ores.
7. Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
8. Chinaware and glass.
9. Paper and paper-making materials.
10. Soap, paint and colors, including articles exclusively used in their manufacture, and varnish.
11. Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
12. Agricultural, mining, textile, and printing machinery.
13. Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
14. Clocks and watches other than chronometers.
15. Fashion and fancy goods.
16. Feathers of all kinds, hairs, and bristles.
17. Articles of household furniture and decoration; office furniture and requisites.

* * * *

Article 29. Likewise the following may not be treated as contraband of war.

1. Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation be requisitioned if their destination is that specified in Article 30.
2. Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

APPENDIX II

BY THE KING

A PROCLAMATION*

Consolidating, with Additions and Amendments, the Lists of Articles to be Treated as Contraband of War

SCHEDULE I (Absolute Contraband)

Abrasive materials (see "Emery").
Acetic acid and acetates.
Acetic anhydride.
Acetic ether.
Acetones and raw or finished materials usable for their preparation.
Aircraft of all kinds, including aeroplanes, airships, balloons and their component parts, together with accessories and articles suitable for use in connection with aircraft.
Albumen.
Alcohols, including fusel oil and wood spirit and their derivatives and preparations.
Aluminium and its alloys, alumina and salts of alumina.
Ammonia.
Ammonia liquor.
Ammonium salts.
Aniline and its derivatives.
Animals, saddle, draught, and pack, suitable or which may become suitable, for use in war.
Antimony, and the sulphides and oxides of antimony.
Apparatus which can be used for the storage or projecting of compressed or liquefied gases, flame, acids or other destructive agents capable of use in warlike operations, and their component parts.
Armour plates.
Arms of all kinds, including arms for sporting purposes, and their component parts.

*Final British list of contraband articles, published in the *London Gazette*, July 3, 1917.

Arsenic and its compounds.
Arsenical ore.
Asbestos.
Asphalt, Balata (see "Rubber").
Bamboo.
Barbed wire, and the implements for fixing and cutting the same.
Barium chlorate and perchlorate.
Barium sulphate (barytes).
Bauxite.
Benzine (see "Mineral Oils").
Benzol and its mixture and derivatives.
Bitumen.
Bleaching powder.
Bone black.
Bones in any form, whole or crushed; bone ash.
Borax, boric acid and other boron compounds.
Bromine.
Cadmium, cadmium alloys, and cadmium ore.
Calcium acetate, nitrate, and carbide
Calcium sulphate.
Camp equipment, articles of, and their component parts.
Camphor.
Capsicum.
Carbolic acid (see "Phenol").
Carbon disulphide.
Carbon, halogen compounds of.
Carborundum (see "Emery").
Carbonyl chloride (see "Phosgene").
Cartridges (see "Projectiles").
Caustic potash.
Caustic soda.
Celluloid.
Cerium and its alloys and compounds.
Charges (see "Projectiles").
Cheques (see "Gold").
Chloride of lime.
Chlorides, metallic (except chloride of sodium), and metalloidic.
Chlorine.
Chromium and its alloys, salts, compounds and ores.
Clothing and equipment of a distinctively military character.
Cobalt and its alloys, salts, compounds and ores.
Copper pyrites, and other copper ores.
Copper, unwrought and part wrought; copper wire; alloys and compounds of copper.
Cork, including cork dust.
Corundum (see "Emery").
Cotton, raw, linters, cotton waste, cotton yarns, cotton piece goods, and other cotton products capable of being used in the manufacture of explosives.
Coupons (see "Gold").
Credit notes (see "Gold").
Cresol and its mixtures and derivatives.
Cyanamide.
Debit notes (see "Gold").
Diamonds suitable for industrial purposes.
Electrical appliances adapted for use in war and their component parts.
Electrolytic iron.
Emery, corundum, carborundum, and all other abrasive materials, whether natural or artificial, and the manufactures thereof.
Equipment (see "Clothing").
Explosives, materials used in the manufacture of.
Explosives specially prepared for use in war.
Fatty acids.
Felspar.
Ferro-alloys of all kinds.
Ferro-silicon.
Fibres, vegetable, and yarns made therefrom.
Financial documents (see "Gold").
Flax.
Forges, field, and their component parts.
Formic acid and formates.
Formic ether.
Fusel oil (see "Alcohols").
Gases for war purposes and materials for production thereof.
Glycerine.
Gold, silver, paper money, securities, negotiable instruments, cheques, drafts, orders, warrants, coupons, letters of credit, delegation or advice, credit and debit notes, or other documents which in themselves, or if completed, or if acted upon by the recipient, authorize, confirm or give effect to the transfer of money, credit or securities.
Goldbeaters' skin.
Gun-mountings and their component parts.
Gutta Percha (see "Rubber").
Haematite iron ore.
Haematite pig-iron.
Hair, animals of all kinds, and tops, noils and yarns of animal hair.
Harness of all kinds, of a distinctively military character.
Hemp.
Hides of cattle, buffaloes and horses.
Hydrochloric acid.
Implements and apparatus designed exclusively for the manufacture of munitions of war, or for the manufacture or repair of arms or of war material for use on land or sea.
Incendiary materials for war purposes.
Insulating materials, raw or manufactured.
Iodine and its compounds.
Iridium and its alloys and compounds.
Iron (electrolytic).
Iron pyrites.
Kapok.
Lathes, machines and tools, capable of being employed in the manufacture of munitions of war.
Lead and lead ore.
Leather, undressed or dressed, suitable for saddlery, harness, military boots, or military clothing.
Leather belting; hydraulic leather; pump leather.
Letters of credit, delegation or advice (see "Gold").
Light producing materials for war purposes.
Limbers and limber boxes and their component parts.

Lithium (see "Strontium").
Lubricants.
Machines (see "Lathes").
Manganese and manganese ore.
Manganese dioxide.
Maps and plans of any place within the territory of any belligerent, or within the area of military operations, on a scale of four miles to one inch or any larger scale, and reproductions on any scale, by photography or otherwise, of such maps or plans.
Mercury.
Metallic sulphites and thiosulphates.
Mineral oils, including benzine and motor-spirit.
Molybdenum and molybdenite.
Monazite sand.
Motor-spirit (see "Mineral oils").
Motor vehicles of all kinds, and their component parts and accessories.
Naptha (see "Solvent naptha").
Napthalene and its mixtures and derivatives.
Negotiable instruments (see "Gold").
Nickel and its alloys, salts, compounds and ores.
Nitrates of all kinds.
Nitric acid.
Oleum (see "Sulphuric acid").
Orders (see "Gold").
Osmium and its alloys and compounds.
Oxalic acid and oxalates.
Palladium and its alloys and compounds.
Paper money (see "Gold").
Peppers.
Phenates.
Phenol (carbolic acid) and its mixtures and derivatives.
Phosgene (Carbonyl chloride).
Phosphorous and its compounds.
Photographic films, plates, and paper, sensitised.
Pitch.
Platinum and its alloys and compounds.
Potassium salts.
Powder specially prepared for use in war.
Projectiles, charges, cartridges and grenades of all kinds, and their component parts.
Prussiate of soda.
Quebracho wood (see "Tanning substance").
Quillaia bark.
Ramie.
Rangefinders and their component parts.
Rattans.
Resinous products.
Rhodium and its alloys and compounds.
Rubber (including raw, waste, and reclaimed rubber, solutions and jellies containing rubber and any other preparations containing balata and gutta percha, and the following varieties of rubber, viz.: Borneo, Guayule, Jelutong, Palembang, Pontianac, and all other substances containing caoutchouc), and goods made wholly or partly of rubber.
Ruthenium and its alloys and compounds.
Sabadilla seeds and preparations thereof.
Searchlights and their component parts.
Securities (see "Gold").
Selenium.
Silk, artificial, and the manufactures thereof.
Silk, in all forms, and the manufactures thereof; silk cocoons.
Silver (see "Gold").
Skins of calves, pigs, sheep, goats and deer.
Smoke-producing materials for war purposes.
Soap.
Soda lime.
Sodium.
Sodium chlorate and perchlorate.
Sodium cyanide.
Solvent naptha and its mixtures and derivatives.
Starch.
Steel containing tungsten or molybdenum.
Strontium and lithium compounds and mixtures containing the same.
Submarine sound signalling apparatus.
Sulphur.
Sulphur dioxide.
Sulphuric acid; fuming sulphuric acid (oleum).
Sulphuric ether.
Talc.
Tanning substances of all kinds, including quebracho wood and extracts for use in tanning.
Tantalum and its alloys, salts, compounds and ores.
Tar.
Thiosulphates (see "Metallic Sulphites").
Thorium and its alloys and compounds.
Tin; chloride of tin; tin ore.
Titanium and its salts and compounds; titanium ore.
Toluol and its mixtures and derivatives.
Tools (see "Lathes").
Tungsten and its alloys and compounds; tungsten ores.
Turpentine (oil and spirit).
Tyres for motor vehicles and for cycles, together with articles or materials especially adapted for use in the manufacture or repair of tyres.
Uranium and its salts and compounds; uranium ore.
Urea.
Vanadium and its alloys, salts, compounds and ores.
Vegetable fibres (see "Fibres").
Waggons, military and their component parts.
Warrants (see "Gold").
Warships, including boats and their component parts of such a nature that they can only be used on a vessel of war.
Waxes of all kinds.
Wire, barbed (see "Barbed wire").
Wire, steel and iron.
Wood spirit (see "Alcohols").
Wood tar and wood tar oil.
Woods of all kinds capable of use in war.
Wool, raw, combed or carded; wool waste; wool tops and noils; woolen or worsted yarns.
Xylol and its mixtures and derivatives.
Zinc and its alloys.
Zinc ore.
Zirconia.
Zirconium and its alloys and compounds.

SCHEDULE II (Conditional Contraband)

Algae, lichens and mosses.
Barrels and casks, empty, of all kinds, and their component parts.
Bladders.
Boots and shoes, suitable for use in war.
Casein.
Casings.
Casks (see "Barrels").
Charcoal (see "Fuel").
Chronometers.
Clothing and fabrics for clothing, suitable for use in war.
Docks, floating and their component parts; parts of docks.
Explosives not specially prepared for use in war.
Field Glasses.
Foodstuffs.
Forage and feeding stuffs for animals.
Fuel, including charcoal, other than mineral oils.
Furs utilisable for clothing, suitable for use in war.
Gelatine and substances used in the manufacture thereof.
Glue and substances used in the manufacture thereof.
Guts.
Harness and saddlery.
Horse-shoes and shoeing materials.
Lichens (see "Algae").
Mosses (see "Algae").
Nautical instruments, all kinds of.
Oils and fats, animal, fish and vegetable, other than those capable of use as lubricants and not including essential oils.
Oleaginous seeds, nuts, and kernels.
Powder not specially prepared for use in war.
Railway materials; both fixed and rolling stock.
Sausage skins.
Skins utilisable for clothing suitable for use in war.
Sponges, raw and prepared.
Telegraphs, materials for; materials for wireless telegraphs.
Telephones, materials for.
Telescopes.
Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
Vessels, craft, and boats of all kinds.
Yeast.